

EXHIBIT C

1 for your attention.

2 Thank you, Your Honor.

3 THE COURT: All right. Mr. McKeon, you may present
4 the opening statement for the Defendants. Would you like a
5 warning on your time?

6 MR. McKEON: Yes, Your Honor. 10 and 3, please.

7 THE COURT: All right. I'll give you those
8 warnings.

9 You may proceed with Defendants' opening statement when
10 you're ready.

11 MR. McKEON: Thank you, Your Honor.

02:29 12 Well, good afternoon, ladies and gentlemen of the jury.
13 Once again, my name is Mike McKeon, and I'm privileged to
14 represent Samsung in this case. You just heard a lot from
15 Headwater's counsel. I'm going to respond to all of that.

16 But, first, I want to thank each and every one of you for
17 your service on this jury. We certainly know there's a lot of
18 other things you could be doing, other places to be, and we
19 also know that it's a personal sacrifice for you to be here
02:30 20 and take a week out of your life and be with us here in this
21 courtroom.

22 So on behalf of Samsung and my team here, I want to thank
23 you, and I want you to know we're extremely grateful for your
24 decision to do this.

25 Now, I want to say something at the outset. The

1 technology claimed by Headwater in this patent is not used in
02:30 2 Samsung's phones. What the evidence is going to show and what
3 you know from your own personal experience, in today's
4 smartphones like the phones accused in this case, consumers
5 have access to a wide range of applications. Some for
6 education, some for entertainment, some for tools to help you
7 in your everyday life.

8 You might have your favorite apps that you use. I like
02:31 9 Gmail. It helps with navigation. Music streaming is a very,
10 very popular application.

11 And what the evidence is going to show, ladies and
12 gentlemen, is that the user experience using the phone and
13 using the applications is very, very important to building a
14 successful product. What the evidence will show is that the
02:31 15 technology in this Headwater patent is unworkable in Samsung's
16 phones.

17 Now, Headwater's counsel mentioned the company called
18 ItsOn, which actually was a company also started by Doctor
19 Raleigh. Ten years ago ItsOn supplied software, billing
20 software to Sprint for use in phones in Sprint's network. And
21 in fact, ladies and gentlemen, that billing software that
02:32 22 counsel already mentioned actually practiced and used the
23 technology of this patent.

24 And what the evidence will show, ladies and gentlemen, in
25 this trial, that ItsOn software that used this patent was an

1 utter failure. In fact, the ItsOn software that used the '976
2 Patent technology caused applications on the phone to crash,
02:32 3 loss of texts, loss of data, loss of voice. Indeed, what the
4 evidence will show is that the ItsOn software would completely
5 lock up your phone, making it like a brick.

6 You will hear evidence in this courtroom that the
7 customers that used phones with the ItsOn software, their
8 experience was horrendous. And what the evidence will show,
9 ladies and gentlemen, is that Samsung's smartphones use a very
02:33 10 different technology than this patent. There is no
11 infringement of the '976 Patent.

12 Now, with that, I want to briefly introduce Samsung.
13 Samsung actually started in the 1930s as a trading company
14 selling fruits and vegetables, relatively humble beginnings
15 for sure. But as the company grew and expanded in the 1960s,
02:33 16 it began to manufacture and sell black-and-white televisions.
17 Samsung Electronics was born.

18 Today, of course, Samsung is one of the world's most
19 well-known consumer electronics companies. Samsung's designs,
20 manufactures, and sells a wide range of consumer electronics
21 products. You see some of them on the slide here--TVs,
22 tablets, computers, watches, and the vacuum cleaner apparently
23 is a big hit.

02:34 24 But, of course, this case is about mobile phones.
25 Samsung has been a worldwide leader in the development of

1 smartphones. You see examples here on the slide. And one
2 thing Samsung's well-known for is providing phones at
3 different price points. You see here on the slide, the left
4 is the A series all the way down to the Galaxy series on the
5 right. Samsung makes something for everybody.

02:34 6 Now, while some phones will have more bells and whistles,
7 all provide for powerful capabilities and innovative designs.

8 Samsung is based in Seoul, which is in South Korea, and
9 has operations throughout the United States. As Ms. Smith
10 already communicated to you, Samsung has over 20,000 employees
11 here in the United States, including 6,000 employees right
12 here in the state of Texas in six different locations. And as
02:35 13 you heard, Samsung right now as we speak is building a factory
14 in Taylor, Texas.

15 Samsung is an innovator. You see that with its
16 incredible innovative products, but you also see that with the
17 fact that Samsung has over 145,000 U.S. patents that have been
18 issued to Samsung for its technologies.

19 Now, you've already heard from Ms. Rachel Roberts, who's
02:35 20 sitting here at counsel table. She is Samsung's corporate
21 representative in this trial, and she's going to provide
22 testimony later in the case about Samsung and Samsung's
23 innovative products.

24 Now, as you heard, the Plaintiff in this case is
25 Headwater Research, and that company was founded by Dr. Greg

1 Raleigh. The company has two employees with one occupying an
2 office in Tyler, Texas, and the only other employee is Doctor
02:36 3 Raleigh. Headwater does not make any products; it just owns
4 patents.

5 There is only one company in the entire world that has
6 ever agreed to license this patent, and that company is the
7 company that Doctor Raleigh started, ItsOn. ItsOn made and
8 provided billing software and provided it to Sprint as I
02:36 9 mentioned. And as I mentioned also, the billing software that
10 it provided actually used the '976 Patent. ItsOn is the only
11 company in the world that has licensed the '976 Patent and
12 also has made software using the '976 Patent. And what the
13 evidence will show is that the '976 Patented ItsOn software
14 was plagued with problems.

15 You see here, ladies and gentlemen, some of the history
02:37 16 between Sprint, ItsOn, and Samsung. And what you're going to
17 hear is that Sprint wanted to integrate billing software into
18 phones on its network. So in 2013 Sprint entered into an
19 agreement with ItsOn. And in light of that agreement Sprint
20 instructed all of its suppliers, including Samsung, to install
21 this billing software on phones supplied to Sprint. If you
02:37 22 wanted to sell to Sprint, you had to put the software on
23 there. So Samsung did that. And the process began in 2013.
24 Very significant issues arose soon after that.

25 What you see here, ladies and gentlemen, is an example of

1 a Sprint presentation that was given to ItsOn in 2014. This
2 is one year into the relationship. And the presentation makes
3 clear that there were significant problems with the ItsOn
02:38 4 software installed on the phones--battery drain, constant
5 reboots, blocking voice, text, data, message application
6 crash. Bad things were happening on the phones in Sprint
7 network that were using the '976 ItsOn software.

8 But it wasn't just Sprint and Samsung that recognized the
02:38 9 problems; it was also ItsOn. What you see here, ladies and
10 gentlemen, is an internal email that we got in this case. We
11 don't know about this email because it was internal. We got
12 it when they sued us and we got discovery. And what Doctor
13 Raleigh was telling his colleagues, he was acknowledging that
14 there were big problems with the software. Bug is 100 percent
15 fatal, the device completely locks up, the phone is bricked.
02:39 16 These are big problems, and bad things were happening on the
17 phones in the Sprint network using the patented technology.

18 The evidence will show that Samsung did all it could to
19 make a go with it with ItsOn, but bad things were happening
20 because of the '976 ItsOn patented software. Thousands of
21 customers were impacted. Sprint just couldn't continue to use
02:39 22 its customers as guinea pigs. After two years of giving them
23 an opportunity, Sprint and Samsung had to move on. Sprint
24 terminated its agreement with ItsOn in 2015, and the parties
25 moved on.

1 We're going to present in this trial, ladies and
2 gentlemen, two witnesses that are going to give you the
3 background and story with ItsOn. Mr. Daniel Durig is a
4 Samsung employee who worked during this time period with
02:40 5 ItsOn, and Ms. Hannah Sifuentes is a former Sprint employee,
6 now a current T-Mobile employee, and she's going to come to
7 trial and explain to you the things we're talking about here
8 now, the problems they faced with the ItsOn software.

9 Now I'm going to turn to the Samsung phones that
10 Headwater says infringes. The features that they say infringe
11 are actually implemented in the Android operating system
12 installed on Samsung's phones.

02:40 13 Now, what is the Android operating system? You may have
14 heard of it. The operating system in general is software that
15 manages all applications and programs that are on the phone.
16 The Android operating system was not developed at Samsung but
17 rather was developed independently by Google. And the Android
18 operating system is one of the most popular operating systems
19 in the world, and you're going to hear more of the details
02:41 20 about Android in this trial.

21 Now, what you see here are the specific features that
22 Headwater says infringe. On the left, you see the features
23 developed by Google contained within the operating system
24 Android, and on the right you see the feature -- the one
25 feature developed by Samsung called roaming reduction that

1 Headwater also accuses of infringement. This feature was only
02:41 2 used by some phones and only in the Sprint network, not any
3 other carriers, and it was discontinued in 2020. You're going
4 to hear the specifics about these features in this trial.

5 Now, what the evidence will show, ladies and gentlemen,
6 is that there is no infringement of this patent. In fact, the
7 Samsung phones work in a very different way.

8 Now, as the Court instructed you after lunch, the issue
02:42 9 of infringement is an issue that you're going to have to
10 decide in this case, and the Court will instruct you on the
11 law. But, simply, what is important is that in order for
12 there to be infringement of a patent claim, every single
13 requirement, every single element of the claim must be found
14 in the accused product. If not, there's no infringement.

15 So let's walk through some of the analysis that you're
16 going to have to do in this case, and we'll do it with an
02:42 17 example of a simple claim to a stool. On the left we see that
18 claim--made of wood, includes a seat, includes four legs, and
19 it's square, the seat. And the question is, well, does a
20 stool on the right infringe? Well, let's walk through that.
21 Made of wood, got that. Includes a seat, got that. Includes
22 four legs, you got that.

23 What about the last element--a round seat? Not there.
02:43 24 No infringement. What the law tells you, ladies and
25 gentlemen, close is not enough. Being similar is not enough.

1 Every single requirement of the claim must be in the product
2 or there's no infringement. And this is the analysis that
3 you're going to be asked to do in this case with respect to
4 the '976 Patent.

5 Now, counsel walked you through the claim, but I'm going
6 to focus on two of the elements or requirements of the claim.
7 And on this slide, you see the classify element. And what
02:44 8 does that do? Well, that requires -- let's walk through the
9 language together. It says classify. So you got to have the
10 processor classify whether or not the first in application,
11 when running, is interacting in the device display
12 foreground--mobile phone, whether there's interaction in the
02:44 13 device display foreground. Display foreground. Now, the
14 display foreground is a very important part -- element of the
15 claim that I didn't hear mentioned much by counsel.

16 Let's look another element of the claim you're going to
17 hear a lot about in this trial. It's the policy element of
18 the claim. And what does that say? Well, it says that you
19 have this policy such that this internet activity is
20 disallowed when? When is it disallowed? It's disallowed when
02:45 21 the application is not interacting, when there is no
22 interacting in the display, the device display foreground,
23 internet's gone, no interaction; no interaction with the
24 device display, no internet. No interaction in the display,
25 no internet. That's the policy of this patent, ladies and

1 gentlemen.

02:45 2 So let's look at the accused product and see how that
3 applies to the accused product. Well, we've got here at the
4 home screen, and you see this Spotify app and I want to play
5 music. So I hit Spotify app on my home screen and I bring
6 that up. Now I'm in the foreground. I'm at the top of the
7 screen. So I hit my play list or my song, and you can see
8 here the song is playing.

02:45 9 But if I'm listening to my music and I want to check
10 emails mail, what do I do? I go back to the home screen, and
11 you see that here, and I check emails. So what just happened?
12 What happened was my Spotify app now is off the top screen. I
13 don't see it. You don't see it anymore. And you have the top
14 of the screen is the email, Gmail account.

02:46 15 But what is happening? Well, that Spotify is still
16 playing your music, it's still grinding in the background,
17 it's still accessing the network because if it wasn't
18 accessing the network, you wouldn't have any music. But in
19 the accused products, there is no policy that cuts off or
20 blocks your music based on interaction in the device display
21 foreground. Spotify is off the top. You're not interacting
02:46 22 in the device display foreground, but you got network.

23 Ladies and gentlemen, what the evidence is going to show
24 in this case is that the Headwater patent requires an
25 extremely severe policy for cutting off network access for

1 applications. If there's no interaction in the device
2 display, then there's no internet. The music stops.

02:47 3 Now, this certainly may get you better battery savings
4 because you're not going to be grinding in the background, but
5 it gives you a bad user experience. That's what the evidence
6 is going to show. And that is why Samsung's phones simply
7 don't work this way.

8 You see on the slide here, ladies and gentlemen, on the
9 left is the patented approach--no interaction in the display,
10 no internet. And on the right, Samsung's approach, which
02:47 11 allows access to the internet regardless of whether or not the
12 application is interacting in the device display foreground.

13 Ladies and gentlemen, we're going to present Dr. Dan
14 Schonfeld, who has looked at all the evidence, the software
15 code and the deposition testimony, the documentation, and he
16 concluded that there is no infringement of the Samsung
02:48 17 products in this case.

18 You're also going to hear the testimony from the other
19 inventors other than Doctor Raleigh who admit in their
20 deposition, they admitted that they didn't invent Google
21 operating system, they didn't invent anything in that. And
22 you are going to hear this deposition testimony played in this
23 case.

24 So the conclusion there's no infringement, ladies and
25 gentlemen, is not surprising in light of this testimony.

1 MR. McKEON: Yes, Your Honor, if I could get 10
2 minutes and three minutes.

3 THE COURT: I'll warn you when you have 10 minutes
4 remaining and then three minutes remaining.

09:50 5 MR. McKEON: That would be great, Your Honor. Thank
6 you.

7 THE COURT: You may proceed with Defendants' closing
8 argument.

9 MR. McKEON: Good morning, ladies and gentlemen.
10 You made it. You got through all the evidence. We greatly
11 appreciate the hard work this week. We know it wasn't easy.
12 There was a lot coming at you, long days and a lot of hours of
09:50 13 careful attention. We noticed that, and we really, really
14 appreciate your dedication to this really, really important
15 process.

16 Now, in a little while you're going to go back in that
17 room and you're going to deliberate to render a verdict in
18 this case. And I have one thing I want to ask you, one
19 request--when you do that, don't check your common sense at
20 that door.

21 The Judge has already instructed you you should use your
09:51 22 common sense as you deliberate. Use your common sense as you
23 review the evidence and what you heard and what you saw in
24 this courtroom. Use your common sense to consider the
25 evidence. And importantly, ladies and gentlemen, use your

1 common sense when you judge the credibility of the witnesses
2 and indeed the parties. Use your common sense from what
09:51 3 Headwater is telling you here in this courtroom and what is
4 happening in the real world.

5 In this courtroom, ladies and gentlemen, Dr. Raleigh says
6 his '976 patented ItsOn software had minor bugs and
7 prototypes. In the real world, thousands of customers were
8 returning their bricked phones. In this courtroom, Dr. Wesel
9 said the Google source code means one thing. In the real
09:52 10 world, the Google engineer who wrote the code says Dr. Wesel
11 is dead wrong. In this courtroom, Dr. Wesel says average
12 phone users tap their phones all day to keep the screens on.
13 In the real world, no one does this.

14 In this courtroom, Headwater said its patent's worth \$2
09:52 15 billion. In the real world, Headwater tried to sell this
16 patent, tried to sell this patent and hundreds of others and
17 the entire company for \$60 million, and still no one paid. In
18 this courtroom, Headwater said its patents were worth \$2
19 billion. But in the real world, ItsOn, the only company that
20 ever uses the patented technology in a product, went bankrupt.

09:53 21 When you use your common sense and you consider the
22 real-world evidence, ladies and gentlemen, we submit there's
23 only one conclusion--that Samsung does not infringe and this
24 patent is not valid.

25 Now, with that, I want to go through some of the evidence

1 which is my job this morning.

2 Now, my colleague raised the issue over why are we
3 talking about ItsOn and why are we talking about this? Ladies
4 and gentlemen, it's undisputed, it's undisputed, that ItsOn
09:53 5 software as used in the phone practiced the patent. During
6 opening I told you in the first minute of my opening, that
7 this technology was unworkable in Samsung's phones.

8 Ladies and gentlemen, we have evidence, hard evidence
9 that that, in fact, is true, because this technology was in
10 Samsung's phone in the ItsOn software, but it was an utter
11 disaster. There were big, huge problems. And you recall the
12 testimony in this case regarding this.

09:54 13 You recall that in 2013 Sprint and ItsOn entered the
14 agreement to have the software loaded on Samsung's phones and
15 other phones in the Sprint network. And you saw the evidence,
16 ladies and gentlemen--battery drain, constant reboots, block
17 of voice text and data. This is the patented technology.

18 Why is it relevant? Because we're talking about the
19 patented technology. And we know how it really works in the
20 phones--battery drain. The patent purports to save battery
09:54 21 drain, but we know in the real phones it actually draws down
22 the battery. That's what we know from the evidence.

23 You saw Mrs. Hannah Sifuentes, the former Sprint
24 employee. She came here and testified and looked you in the
25 eye, and she told you about the problems. She said the word

1 ticking time bomb. This patented software that was on the
2 Samsung phones was a ticking time bomb. That's what she told
3 you.

09:55 4 And here you see the returns, thousands, hundreds of
5 thousands of customers were returning and it was going up, up,
6 up, returning because of the patented software. They claim --
7 they claim this is a huge innovation and they want \$2 billion
8 for it. But we know when it's actually used in phones, we
9 know what it does and we know the problems it creates.

10 And then we know the internal -- at the time the internal
11 emails from Dr. Raleigh. Even he knew what the problems
09:55 12 were--fatal bug, a hundred percent fatal; it's a new bug, a
13 hundred percent fatal, completely locks up the phone. The
14 phones completely crashed, the phone is bricked. These are
15 his words, ladies and gentlemen, his words. His evaluation of
16 his own technology that was actually in the phones.

17 Of course this is relevant. Of course this is pertinent
18 when you're trying to value the technology and when you're
19 trying to figure out whether this is actually in Samsung's
09:56 20 phones today, now, in the accused products, this type of
21 technology.

22 Dr. Raleigh told you, well, it was just bugs and
23 prototypes. Ms. Sifuentes, third party, came in this
24 courtroom, took her time out to come and tell you the story
25 about that--that the problems were happening in actual

1 customer products in the network, not prototypes.

09:56 2 Finally, in 2015, you heard it came to a head. Problems
3 were -- was too long, too great; the customers were being used
4 as guinea pigs, and they couldn't take it anymore. Mrs.
5 Sifuentes told you the ticking time bomb, the guinea pigs
6 couldn't be -- customers couldn't be used as guinea pigs any
7 longer to stay a viable business. It was a game of
8 whack-a-mole. These are her words, ladies and gentlemen, her
9 evaluation of the technology.

10 Now, my colleague on the other side says, well, notice is
09:57 11 not relevant. Ladies and gentlemen, in order for there to be
12 infringement, notice is not relevant. There is no dispute
13 about that. There is no dispute about that in this case.

14 But, ladies and gentlemen, what about the real world?
15 What about the real world? When the relationship broke down,
16 it was seven years went by. Samsung was selling phones,
17 selling phones with the Android on it, Android software on it
18 with the accused products. If this patent was so valuable and
09:58 19 so great as they claim now in this courtroom, ladies and
20 gentlemen, if it was so great, why didn't they pick the phone
21 up and call? Why did they wait that long, seven years as
22 these sales continued?

23 If someone was trespassing on your property and you
24 noticed, would you just wait and then sue them? Was
25 that -- does that make sense? Is that common sense to you?

1 No, ladies and gentlemen, it's not. It's not common sense.

09:58 2 In fact, ladies and gentlemen, we believe what the
3 evidence shows is that what really was going on, Headwater
4 never believed Samsung was using this patent. It never
5 believed that, and this lawsuit is an attempt to get money for
6 a patent no one wanted. That's why the fact that they didn't
7 call up Samsung for seven years, that's why it's
8 relevant--because it shows you what they really believe,
9 ladies and gentlemen. It is relevant for your consideration.

09:58 10 Don't check your common sense at the door.

11 Now I want to turn to the important issue of
12 infringement, and this is a very important issue in this case
13 that you're going to be asked to decide.

14 Now, before this trial started, we got to talk to Dr.
15 Raleigh in deposition, and you recall he was on that stand and
16 he told you about his great invention and what he came up with
17 and it was groundbreaking. That's what he told you.

18 But before this trial, we deposed him, and this is what
19 he said. This is what he said, ladies and gentlemen. You got
09:59 20 to hear this in this trial: Can you explain for me a single
21 concept that you came up with in the asserted patent?

22 I'm not sure.

23 Did you come up with foreground versus background?

24 Ladies and gentlemen, you've been hearing about this all
25 week, foreground and background. And he was asked and under

1 oath in deposition, did you come up with this?

2 I'm not even sure what that is. I can't really say. You
3 haven't defined it.

4 That's what he said before this trial, before this week.

09:59 5 He said other things on the witness stand. You heard that.

6 It's about credibility, ladies and gentlemen. About
7 credibility.

8 We also deposed the inventors, other inventors, and what
9 did they say? Well, Dr. Raissinia, did you invent anything in
10 the Android system?

11 No.

12 Mr. Lavine, Headwater's patents were meant to be directed
13 to something different from what Google's operation system
14 provides.

15 Answer, yes.

10:00 16 These folks are not with Headwater any longer. They're
17 outside of this trial. They were deposed, and this is what
18 they said under oath. This is what they said: No, our
19 stuff's not Android.

20 Now, let me just briefly go through the claim that you've
21 heard so much about in this trial. But, ladies and gentlemen,
22 the key language of the claim, the key language of the claim,
23 is interacting in the device display foreground. Interacting
10:00 24 in the device display foreground. That's key. So when they
25 show you slides that don't have that language, interacting in

1 the device display foreground, just note that because you know
2 now--right?--every single word matters. Interacting in the
3 device display foreground.

4 And then the policy, the policy of the claim disallows,
5 disallows, access to the internet for applications when
6 they're not interacting in the device display foreground.

10:01 7 That's the claim language. So keep that in mind when you
8 evaluate the infringement question in this case. It's very
9 important.

10 And you've seen this before, but this is how the accused
11 products work. If you want to play music, you call up your
12 application. And then if you want to check emails, your
13 application goes to the back. It's classified as a foreground
14 service. You heard that evidence. And that's important
10:01 15 because it allows it to keep playing, to keep playing even
16 though you can't see it. But that uses battery power. That
17 uses network so you're checking your application and the music
18 is playing.

19 And the difference, ladies and gentlemen, is fundamental,
20 because this case, the claim requires if there's no
21 interaction, you shut it down. It's a very harsh solution.
22 And as Dr. Schonfeld told you back in 2010, maybe that made
10:02 23 sense to have such a harsh solution because of roaming and the
24 batteries weren't as good. But today, ladies and gentlemen,
25 that doesn't make sense to have such a harsh solution. If